Study Unit 3

Legality of Contracts of Lease

1. General Principle of Legality

1 requirement that conclusion, performance & object of a contract must be lawful also applies to lease. A contract is unlawful when its conclusion, performance & object is forbidden by statutory or common law, or is contrary to public interest or good morals.

Madame X - Brothel

In this case a lease contract would be illegal & void:

1. If requirements of National Credit Act 34 of 2005 are not met
2. If premises are let to be used as a brothel in terms of Act 28 of 1957
3. If lease contravenes a common law rule such as requirement in respect of certainty of rent

2. Consequences of Illegality

The contract is illegal & void & unenforceable. A court will not enforce an illegal lease, even if illegality is an issue, I owes of proof is on I party alleging it.

3. *Ex Turpi Causa Non Oriitur Actio* - means "From an immoral cause no action ensues.

ABSOLUTE RULE OF LAW - NO EXCEPTIONS*
madame X paid her rent for a building from which she runs a brothel - it makes no difference because performance does not render a contract legal. The court will not enforce the contract.

1. Unlawfulness of a contract means a party has suffered damages as a result of a contract, may not claim damages from the other party by relying on the contract & the party may not claim performance from the other.

4) The Par Delictum Rule

It seems unfair to allow a lessor to keep the rent paid in terms of an illegal contract e.g. madame X rents a luxury home from Y to run a brothel, Y knows that she wants to run a brothel & charges her very high rent of 30,000 per month & 50,000 deposit because the contract is void restitution should be granted - this rule is based on unjustified enrichment. Another rule which prevents a lessee from claiming rent back (in pari delicto potior est conditio possidentis - where 2 parties are both guilty, one who is in possession is in a stronger position).
Relaxation of 'One Per Delictum' Rule

The underlying thought behind the 'one per delictum' rule is that a party who has acted disgracefully by executing a performance should not be allowed to recover such performance. Thus, where a party to an unlawful contract has performed but his/her performance is not disgraceful, he/she can recover which he/she has performed from the other party. The 'one per delictum' rule is applied as a general rule to which an exception must be made whenever 'simple justice' bet man & man demands it.

STUDY UNIT 4

THE OBLIGATIONS OF LESSOR

When a contract of lease is concluded, the parties are bound by those obligations which they have expressly or implicitly undertaken or which I law imposes upon them in the absence of such express or implied agreement.

Lessor is obliged: (1) to make available or deliver the use and enjoyment of the property (2) to refrain from disturbing the lessee's use & enjoyment of the property (3) to keep & maintain the property in the condition agreed upon (4) to warrant against eviction

If the lessor fails to fulfill one of the above - breach of contract

Failure to deliver = Morus Debitoris
Delivery of defective performance = positive malperformance
Delivery to someone other than I contracted lessee = Repudiation
Failure to prevent eviction = positive malperformance